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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,150	04/06/2005	David Paul Sumners	330-020	8979
24002	7590	05/24/2006	EXAMINER	
ANTHONY R. BARKUME 20 GATEWAY LANE MANORVILLE, NY 11949			CHHABRA, ARUN S	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 05/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/507,150

Applicant(s)

SUMNERS ET AL.

Examiner

Arun S. Chhabra

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-38 is/are pending in the application.
- 4a) Of the above claim(s) 33-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22-26 and 28-32 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/6/05 and 1/13/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Applicant's election of claims 22-32 in the reply filed on May 10, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 33-38 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 10, 2006.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the grip of claim 24 and 27 and the pulley of claim 26 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 28-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear based on the specification how exactly the fluid pumping means produces a vibration. More specifically, it is unclear from the specification the importance of the features of claim 30. Applicant is advised to revise the specification to add more language describing more in detail how the fluid pumping means works as shown in Figure 7 and the importance of the valve system allowing single or double action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

、 A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilkin (US Patent Number 3,851,874).

Wilkin discloses an exercise device that utilizes weights as a resistance means to resist the movement of a cable by a user. The device of Wilkin also utilizes a pulley as a means for imparting a vibration to a user as muscles are being exercised with the resistance means. To exercise, a user holds a grip, which is attached to one end of the cable and pulls against weights, which are attached to the other end of the cable. The moving component (cable) traverses around a pulley, which vibrates the cable as it is moved and thus translates a vibration to the user's muscles via the cable. As the cable is pulled, it rotates the pulley which by its sheer nature in turn rotates the cable around the pulley. Due to the square and ratchet shape of the pulley as shown in Figure 3, a vibration is imparted at each corner of the pulley as the cable intermittently brakes and jerks back and forth.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkin in view of Schiessl (US Patent Number 6,659,918) and Klasen (US Patent Number 5,868,653).

Wilkin discloses the claimed invention except for the frequencies of vibration. Schiessl and Klasen both teach that it is known to use vibratory frequencies between 5 and 100 Hz when stimulating muscles during exercising. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device as taught by Wilkin, to employ vibratory frequencies between 5 and 100 Hz as taught by both Schiessl and Klasen, since such a modification would provide the device with proper frequencies for stimulating muscles of the body.

Allowable Subject Matter

Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In addition, it is imperative that the features of claim 27 such as the handle or grip be shown in the drawings as every inventive feature of the claims must be shown in the drawings.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. SU 1447385 to Mikheev as disclosed by Applicant is known for using frequencies of vibration between 5 and 100 Hz.

In addition, it is noted that aside from the rejection under 35 U.S.C. 112, claims 28-30 as written would read upon prior art in the sense that it is known to use


dampeners to impart vibrations by varying the flow of fluid or gas in a chamber.

However, the vibration means that Applicant appears to have basis for in the drawings and what Applicant seems to be describing in their description of the vibration means in claims 28-30 looks to have some allowable material. If Applicant were to be a little more descriptive and specific when claiming the vibration means in claims 28-30, and provide basis for claims 28-30 in the specification, then claims 28-30 would seem to be allowable over the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Chhabra whose telephone number is 571-272-7330. The examiner can normally be reached on M-F 9:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


STEPHEN R. CROW
PRIMARY EXAMINER
ART UNIT 332